

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**In re:** : **Chapter 11**  
: **Case Nos. 00-B-41065 (SMB)**  
**RANDALL’S ISLAND FAMILY GOLF** : **through 00-B-41196 (SMB)**  
**CENTERS, INC., et al.,** :  
: **(Jointly Administered)**  
**Debtors.** :  
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**MOTION OF THE DEBTORS PURSUANT TO  
SECTION 345 OF THE BANKRUPTCY CODE  
FOR APPROVAL OF INVESTMENT GUIDELINES**

**TO THE HONORABLE STUART M. BERNSTEIN,  
UNITED STATES BANKRUPTCY JUDGE:**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”) hereby submit this motion (the “Motion”) pursuant to section 345 of title 11 the of the United States Code (the “Bankruptcy Code”) for an order approving certain investment guidelines, and respectfully represent as follows:

**Background**

1. On May 4, 2000 (the “Filing Date”), each of the Debtors filed with this Court separate voluntary petitions for relief under chapter 11 of the Bankruptcy Code. By order of this Court dated as of the Filing Date, the Debtors' chapter 11 cases are being jointly administered. Pursuant to sections 1107 and 1108 of the Bankruptcy Code, the Debtors are continuing to operate their businesses and manage their properties as debtors-in-possession.

2. The Debtors operated golf, ice skating and family entertainment centers throughout North America. As of the Filing Date, the Debtors owned and/or operated 100 golf facilities and 17 ice skating and family entertainment centers.

3. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (D) and (M), in that it is a matter concerning the administration of the Debtors estates, obtaining credit and the use of property, including use of cash collateral.

4. On May 12, 2000, the United States Trustee for the Southern District of New York appointed the Official Committee of Unsecured Creditors (the “Committee”) in these cases pursuant to section 1102 of the Bankruptcy Code.

5. As this Court is aware the Debtors, have recently completed an auction of substantially all their assets. As a result, the Debtors’ assets now, or will shortly, consist mainly of cash (the “Funds”) generated from these sales and the Debtors anticipate that they will distribute these Funds to their creditors pursuant to a liquidation plan under chapter 11 of the Bankruptcy Code. In an effort to maximize the value of their remaining assets for the creditors, the Debtors propose to invest the Funds as set forth below.

**Investment Requirements of  
Section 345 of the Bankruptcy Code**

6. Section 345 of the Bankruptcy Code governs a debtor’s deposit and investment of cash during a chapter 11 case. Section 345(a) of the Bankruptcy Code authorizes deposits or investments of money “as will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment.” For deposits or investments that are not “insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States,” section 345(b) of the Bankruptcy Code provides that the estate must require from the entity with which the money is deposited or

invested a bond in favor of the United States secured by the undertaking of an adequate corporate surety, unless the court for cause orders otherwise. In the alternative, the estate may require that the entity deposit governmental securities pursuant to 31 U.S.C. § 9303.<sup>1</sup>

**The Proposed Investment Guidelines  
Will Maximize the Value of the Debtors' Estates**

7. Pursuant to section 345(b) of the Bankruptcy Code, the Debtors seek authority to invest the Funds in accordance with the investment guidelines set forth in Exhibit "A" attached hereto (the "Investment Guidelines") while they wind down their affairs and prepare a liquidating plan under chapter 11. These Investment Guidelines are intended to serve as an addition to the investments permitted by section 345 of the Bankruptcy Code.

8. Pursuant to the Investment Guidelines, the Debtors will invest their cash in their sole discretion in:

- a. securities issued or directly and fully guaranteed by the United States government or any agency thereof with a maturity no longer than 365 days from the date of the investment;
- b. interest-bearing certificates of deposit, bankers' acceptances, bank holding company commercial paper, time deposits, or overnight bank deposits, each with a domestic commercial bank having a combined capital and surplus in excess of \$100 million and a long-term debt rating on securities issued by them of A (or equivalent), as listed by either Standard & Poor's or Moody's Investor Services, Inc.;
- c. corporate obligations (such as corporate bonds or commercial paper) rated "A-1" or higher by Standard & Poor's or rated "P-1" or higher by Moody's Investor Services, Inc.;

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<sup>1</sup> 31 U.S.C. § 9303 provides that where a person is required by law to give a surety bond, that person, in lieu of such surety bond, may provide a governmental obligation.

- d. repurchase agreements subject to the same requirements of any of the foregoing; and
- e. any funds (such as a money market fund) investing in the above described securities or commercial paper to the extent that the fund holds investments in excess of \$100 million and to the extent that the Debtors' aggregate investment in such fund is less than 10% of the total amount invested in that fund.

9. The proposed Investment Guidelines will enable the Debtors to maintain the security of their investments, as required by section 345 of the Bankruptcy Code, while at the same time provide them with the flexibility they require to maximize the yield on the investment and deposit of the Funds.

10. The Debtors believe that it would be in the best interests of their estates and creditors for them to follow the proposed Investment Guidelines, as the yield on investments under the proposed Investment Guidelines will be substantially greater than if the Debtors were restricted to direct investments in government securities.

11. Investment of cash in strict compliance with the requirements of section 345(b) in these cases would be inconsistent with section 345(a) of the Bankruptcy Code, which permits a trustee or debtor-in-possession to make such investments of money of the estate "as will yield the maximum reasonable net return on such money." 11 U.S.C. § 345(a). The Debtors believe that investments within the Investment Guidelines provide the protection contemplated by section 345(b) of the Bankruptcy Code, notwithstanding the absence of a "corporate surety" requirement. First, the Investment Guidelines permit investments only in securities of the United States government and its agencies and in securities of private corporations and domestic banks of substantial financial strength, as measured by investment ratings. As to investments in securities of private entities, any corporate

surety that might be obtained to guarantee the safety of an investment would likely not have significantly greater financial strength than the private entities in which the Debtors could invest under the Investment Guidelines. In addition, in respect of certificate of deposit, banker's acceptances, and similar bank paper, the Investment Guidelines require diversification of investments and limit the size of investments in any one private company or bank. Finally, a bond secured by the undertaking of a corporate surety would be prohibitively expensive, if such bond is available at all, and could offset much of the financial gain derived from investing in private as well as federal or federally guaranteed securities.

12. In other large chapter 11 cases, courts have liberally construed the requirement of section 345(b) that a debtor-in-possession obtain a bond from any entity with which its money is deposited or invested. In those instances, courts have waived the requirements of section 345(b) and replaced them with alternative procedures. See, e.g., In re Integrated Health Services, Inc., Chapter 11 Case No. 00-389 (MFW)(Bankr. D. Del. February 2, 2000); In re Mariner Post-Acute Network, Inc., Chapter 11 Case No. 00-113 (MFW) (Bankr. D. Del. January 18, 2000); In re Vencor, Inc., Chapter 11 Case No. 99-3199 (MFW) (Bankr. D. Del. September 13, 1999); In re Planet Hollywood International, Inc. Chapter 11 Case No. 9903612 (JJF) (Bankr. D. Del. 1999); In re APS Holding Corporation, Chapter 11 Case No. 98-197 (PJW) (Bankr. D. Del. 1998). See also In re Service Merchandise Co., Inc., 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999) (finding "cause" to waive the section 345(b) requirements where the debtors were large and sophisticated with a complex cash management system). The Debtors respectfully submit that similar authorization is appropriate in these case.

### **Procedure**

13. Notice of this Motion has been provided to the United States Trustee, counsel for the Committee, counsel for The Chase Manhattan Bank and to parties that have filed a notice of appearance in these cases. The Debtors submit that no other or further notice need be provided.

14. No previous motion for the relief sought herein has been made to this or any other court.

### **Conclusion**

WHEREFORE, the Debtors respectfully request that the Court enter an order in substantially the form annexed hereto approving the Debtors' proposed investment of their cash and cash equivalents in accordance with the Investment Guidelines, and granting the Debtors such other and further relief as is just.

Dated: New York, New York  
March 6, 2001

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By /s/ Jonathan L. Flaxer  
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A Member of the Firm